(25,737)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 907.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION, PLAINTIFF IN ERROR,

vs.

E. D. ROBERTS, AS TREASURER OF THE STATE OF CALIFORNIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

INDEX.

	Original.	Print
Caption	1	1
Transcript of record from the superior court of the city and county of San Francisco	3	1
Complaint	3	1
Answer	26	11
Judgment	29	12
Bill of exceptions	30	13
Counsel's certificate	32	14
Judge's certificate	33	14
Notice of appeal	33	14
Stipulation as to record on appeal	34	15
Opinion, Sloss, J.	36	15
Judgment reversed	44	20
Order denying rehearing	46	20

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 27, 1917.

	Original.	Print
Assignment of errors	48	21
Bond on writ of error	52	23
Petition for writ of error	55	24
Order allowing writ of error	56	25
Writ of error	58	26
Citation and service	62	27
Extract from brief of bank	65	28
Clerk's certificate	68	29
Clerk's return to writ of error	69	29
Certified copy of judgment	71	31

1 & 2 In the Supreme Court of the State of California.

S. F., No. 6602.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION, a Corporation, Respondent,

vs.

E. D. ROBERTS, as Treasurer of the State of California, Appellant.

TRANSCRIPT ON APPEAL.

From a judgment of the Superior Court of the City and County of San Francisco.

Hon. Geo. A. Sturtevant, Judge.

U. S. Webb, Attorney General, and Raymond Benjamin, Chief Deputy Attorney General, Attorneys for Appellant.

James M. Allen, Attorney for Respondent.

Filed this 28th day of May, A. D. 1913. B. Grant Taylor, Clerk, by Erb, Deputy Clerk.

3 In the Supreme Court of the State of California.

Transcript on Appeal.

In the Superior Court of the State of California, in and for the City and County of San Francisco.

No. 40614. Dep. 8.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION (a Corporation), Plaintiff,

vs.

E. D. ROBERTS, as Treasurer of the State of California, Defendant.

The plaintiff, The Bank of California, National Association, complains of the defendant, E. D. Roberts, the Treasurer of the State of California, and for cause of action alleges:

That the plaintiff is and was at all the times herein men-
4 tioned a corporation organized and existing under the "National Bank Act" of the United States of America with a capital stock of 85,000 shares of the par value of $100.00 each, and

doing a general banking business in the City and County of San Francisco, in the State of California;

That the defendant, E. D. Roberts, is the Treasurer of the State of California;

That between the first Monday in March and the third Monday before the first Monday in July, in the year 1911, the Board of Equalization of the State of California assessed the 85,000 shares of the capital stock of said The Bank of California, National Association, and valued the same for taxation at the sum of $15,531,588.00, and assessed and levied a tax thereon of one per centum, amounting to the sum of $155,315.88, for said year 1911, and assessed and taxed the said shares to the plaintiff;

That at all the times herein mentioned the plaintiff was the owner of 2,501 shares of the capital stock of The National Bank of D. O. Mills & Co., a corporation organized and existing under said "National Bank Act" and doing a general banking business in the City of Sacramento, in the State of California;

That at all the times herein mentioned the plaintiff was
5 the owner of 1,049 shares of the capital stock of The Mission Bank, a corporation organized and existing under the laws of the State of California, and doing a general banking business in said City and County of San Francisco;

That at all the times herein mentioned the plaintiff was the owner of 30,000 shares of the capital stock of the San Francisco and Fresno Land Company, a corporation organized and existing under the laws of the State of California for the purpose of dealing in real estate;

That said Board of Equalization, in assessing said 85,000 shares of the capital stock of the plaintiff as aforesaid and in determining the value thereof for such taxation, included said 2,501 shares of the capital stock of The National Bank of D. O. Mills & Co. and the value thereof, which was fixed and determined by said Board to be $627,867.00 in the assets of said Association and in said assessment or sum of $15,531,588.00, and made the same part of said sum or assessment of $15,531,588.00;

That said Board of Equalization, in assessing said 85,000 shares of the capital stock of the plaintiff as aforesaid and in determining the value thereof for such taxation, included said 1,049 shares of the capital stock of The Mission Bank and the value thereof, which was
fixed and determined by said Board to be $120,101.059 in
6 the assets of said Association and in said assessment or sum of $15,531,588.00, and made the same part of said sum or assessment of $15,531,588.00;

That said Board of Equalization, in assessing said 85,000 shares of the capital stock of the plaintiff as aforesaid and in determining the value thereof for such taxation, included said 30,000 shares of the capital stock of the San Francisco and Fresno Land Company and the value thereof, which was fixed and determined by said Board to be $469,762.04 in the assets of said Association and in said assessment or sum of $15,531,588.00, and made same part of said assessment or sum of $15,531,588.00;

That notwithstanding the said Board of Equalization had assessed

and valued the said 85,000 shares as aforesaid and assessed and levied the said tax of $155,531.88 thereon to the plaintiff, the said Board of Equalization, between the first Monday in March and the third Monday before the first Monday in July, in the year 1911, again and for the second time assessed the said 2,501 shares of the capital stock of The National Bank of D. O. Mills & Co. and valued the same for taxation for said year 1911 at $627,867.00, and for said year 1911 again and a second time assessed and levied a tax
7 thereon of one per centum, amounting to $6,278.67, and for the second time assessed and taxed said 2,501 shares to the plaintiff, and thereby doubled the tax thereon for said year 1911 and compelled the plaintiff to pay the same tax for the said year on said 2,501 shares twice;

That notwithstanding the said Board of Equalization had assessed and valued the said 85,000 shares as aforesaid and assessed and levied the said tax of $155,531.88 thereon to the plaintiff, the said Board of Equalization, between the first Monday in March and the third Monday before the first Monday in July, in the year 1911, again and for the second time assessed the said 1,049 shares of the capital stock of The Mission Bank and valued the same for taxation for said year 1911 at $120,101.059, and for said year 1911 again and a second time assessed and levied a tax thereon of one per centum, amounting to $1,201.0159, and for the second time assessed and taxed said 1,049 shares to the plaintiff, and thereby doubled the tax thereon for said year 1911 and compelled the plaintiff to pay the same tax for the said year on said 1,049 shares twice;

That between the first Monday in March and the third Monday before the first Monday in July, in the year 1911, said Board
8 of Equalization, in assessing the said 85,000 shares of the capital stock of The Bank of California, National Association, and valuing the same for taxation for said year 1911 at said sum of $15,531,588.00, included in said sum and made part thereof the said sum of $469,762.04, said Board of Equalization's assessed value of said 30,000 shares of the capital stock of said San Francisco and Fresno Land Company, and assessed and levied a tax thereon for said year 1911 of one per centum to the plaintiff, amounting to the sum of $4,697.6204, which was included in and was part of said sum of $155,315.88, the tax levied and assessed as aforesaid to plaintiff on said 85,000 shares;

That all the property owned by said San Francisco and Fresno Land Company at twelve o'clock noon on the first Monday in March in the said year 1911, was assessed for the fiscal year 1911-1912 and taxes were assessed and levied thereon for said fiscal year 1911-1912 and in the manner provided by the laws of the State of California;

That after the first Monday in March, 1911, and before the said Board of Equalization had assessed the 85,000 shares as aforesaid, the plaintiff requested the said Board, in making the said assessment and in valuing said 85,000 shares for the purpose of
9 assessing and levying the tax thereon for the year 1911, not to include in, but to exclude from, the said assessment and its valuation of said shares, the said 2,501 shares of the capital stock of

The National Bank of D. O. Mills & Co., the said 1,049 shares of the capital stock of The Mission Bank and the said 30,000 shares of the capital stock of the San Francisco and Fresno Land Company; but said Board refused so to do and included the same in said assessment and valuation of said 85,000 shares of The Bank of California, National Association; and the plaintiff also then requested the said Board not to assess and levy said tax on said 2,501 shares and said 1,049 shares as part of the assets or valuation for said year 1911, but said Board refused so to do;

That on the first Monday of July, 1911, and after the third Monday before said first Monday, the plaintiff, being dissatisfied with said assessment of said 85,000 shares and said assessment of said 2,501 shares and said 1,049 shares by the said Board of Equalization, applied to the said Board to correct the same by excluding from said assessment of said 85,000 shares the said 2,501 shares of The National Bank of D. O. Mills & Co. and said Board's assessed value thereof, to wit, said $627,867.00, said 1,049 shares of The
10 Mission Bank and said Board's assessed value thereof, to wit, said $120,101.059, and said 30,000 shares of the San Francisco and Fresno Land Company and said Board's assessed value thereof, to wit, said $469,762.04; but said Board refused to correct the said assessment of said 85,000 shares and refused to omit or exclude said 2,501 shares and said assessed value thereof, said 1,049 shares and said assessed value thereof and said 30,000 shares and said assessed value thereof or any of them from said assessment of said 85,000 shares;

That thereafter and after the "Record of Assessments for State Taxes" for the said year 1911 had been delivered by the Secretary of the said Board of Equalization to the Controller of the State of California and the said sum of $155,531.88, the said taxes assessed and levied on said 85,000 shares as aforesaid by said Board of Equalization to the plaintiff, had become due or payable, the plaintiff paid to said Controller said taxes, said sum of $155,531.88, under protest in writing, and filed the said protest in writing with the said Controller;

That in said protest the plaintiff claimed that the whole of said tax so assessed and levied on said 85,000 shares was void and that each and every part thereof was void; that the said protest
11 stated the following grounds upon which said claim was founded, to wit:

1. That the assessment and taxation of the shares of capital stock of the national banks located in this state, in the manner and by the method provided by said Act of April 1st, 1911, is at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of this state and in conflict with the provisions of Section 5219 of the Revised Statutes of the United States;

2. That the said Act of April 1st, 1911, denies to the owners and holders of shares of capital stock in banks the right of deduction of their just debts and bona fide indebtedness from the cash value of said shares of capital stock, while permitting to other individual

citizens the right to deduct their just debts and bona fide indebtedness from the valuation of their personal property of every kind;

3. That the said Act makes no provision for the, or any due deduction from the capital or the accumulated surplus or the undivided profits of banks for good will, in the ascertainment and determination of the value of each of the shares of capital stock in said banks;

4. That the said assessment, levy and taxation is made upon the value of each share of the capital stock of said banks without
12 making or providing for a, or any, due deduction from the value of the property, or the accumulated surplus, or undivided profits, or capital of said banks, of United States bonds, state and municipal bonds, shares of the capital stock of corporations created under the laws of the State of California, and other non-taxable securities owned by them, or of the assets of said bonds invested in said United States bonds, municipal bonds, shares of the capital stock of corporations created under the laws of the State of California, or other non-taxable securities;

5. That said tax and every part thereof, in so far as the same is laid, assessed, levied or imposed upon the shares of capital stock of said banks without deducting from the capital, or accumulated surplus, or undivided profits, of said banks the income derived by them from any United States, or state, or municipal securities held by them, is unconstitutional as an attempt to impose a tax upon and impair the credit of the United States or the state or municipal government issuing the said securities;

6. That the assessment of the real estate of said banks, in the manner provided in Section 26 of said Act, is arbitrary, discriminatory and unjust;

13 7. That the assessment and taxation of said shares of capital stock, in the manner provided in said Act, is arbitrary, discriminatory and unjust;

8. That the assessment and taxation of said shares of capital stock, in the manner provided in said Act, constitutes and is a taking of private property for public use without just compensation;

9. That the assessment and taxation of said shares of capital stock, in the manner provided in said Act, deprives the owners and holders of said shares of capital stock, of their property without due process of law.

That after the said "Record of Assessments for State Taxes" for said year 1911 had been delivered to said Controller as aforesaid and the said sum of $6,278.67, the said taxes assessed and levied on said 2,501 shares of the capital stock of The National Bank of D. O. Mills & Co. as aforesaid by the said Board of Equalization to the plaintiff had become due or payable, the plaintiff paid to said Controller the said taxes, to wit, the said sum of $6,278.67, under protest in writing and filed the same with the said Controller at the time of the payment of said taxes;

14 That the following is a copy of said protest, to wit:

"To Hon. Alfred B. Nye, Controller of the State of California, and Hon. E. D. Roberts, Treasurer of the State of California.

SIRS: The sum of six thousand two hundred and seventy-eight and 67/100 dollars ($6,278.67), being the taxes assessed and levied for the fiscal year ending June 30th, 1912, to The Bank of California, National Association, on 2,501 shares of the capital stock of The National Bank of D. O. Mills & Co.—which 2,501 shares were, at 12 o'clock noon and prior thereto on the first Monday in March, 1911, and ever since have been owned and held by said The Bank of California, National Association, and which were thereafter assessed by the State Board of Equalization of the State of California and taxed to said The Bank of California, National Association—is herewith paid under protest upon the following grounds:

The National Bank of D. O. Mills & Co. is and was at twelve o'clock noon on the first Monday of March, 1911, a corporation organized and existing under the "National Bank Act" of the United States of America and doing a general banking business in the City of Sacramento, in the State of California.

15 The Bank of California, National Association, is and was at said time a corporation organized and existing under said "National Bank Act" and doing a general banking business in the City and County of San Francisco, in said State.

The authorized and issued capital stock of said Association is and was at said time 85,000 shares of the par value of $100.00 each.

After the first Monday in March, 1911, the value of said 85,000 shares of the capital stock of The Bank of California, National Association, was assessed by said State Board of Equalization—after deducting the value as assessed for county taxes of the real estate owned by said Association at twelve o'clock noon on the first Monday in March, 1911, and taxed for county purposes—at the sum of $15,531,588.00.

Thereafter said State Board of Equalization levied and assessed upon said 85,000 shares of the capital stock of said Association, for the fiscal year ending June 30th, 1912, a tax of one per centum upon the said assessed value of said 85,000 shares, to wit, upon said sum of $15,531,588.00, which tax amounted to and is the sum of $155,315.88.

After the first Monday in March, 1911, the value of said 2,501 shares of the capital stock of said The National Bank of D. O. Mills & Co. owned and held by said Association at twelve o'clock

16 noon of the first Monday in March, 1911, was assessed by said State Board of Equalization at the sum of $627,867.00; and thereafter said State Board of Equalization levied and assessed upon said 2,501 shares for the fiscal year ending June 30th, 1912, a tax of one per centum upon the said assessed value of said 2,501 shares, to wit, upon said sum of $627,867.00, which tax amounted to and is the sum of $6,278.67.

In assessing the value as aforesaid of the 85,000 shares of the capital stock of said Association, said State Board of Equalization included in and made a part of said sum of $15,531,588.00 the said

assessed value of said 2,501 shares of the capital stock of said The National Bank of D. O. Mills & Co., to wit, said sum of $627,867.00.

Said State Board of Equalization, in levying and assessing for said fiscal year said tax of one per centum on said sum of $15,531,588.00 and also said tax of one per centum on said sum of $627,867.00, levied and assessed said tax of one per centum twice, and said 2,501 shares were thus doubly assessed and taxed for the same tax for the same fiscal year.

Said 2,501 shares of the capital stock of said The National Bank of D. O. Mills & Co. are personal property and were owned and held as aforesaid at and during all the times aforesaid and are now owned and held by said The Bank of California, National Association, and by and under the laws of the United States of America cannot be taxed by the State of California and are not subject to taxation by and under the laws of the United States of America.

17

The tax assessed and levied by said State Board of Equalization on the shares of the capital stock of said The Bank of California, National Association, to wit, said tax or sum of $155,315.88, is by the Constitution of the State of California in lieu of all other taxes and licenses, state, county and municipal, upon the property of said The Bank of California, National Association, except county and municipal taxes and as otherwise provided in Section 14, Article 13, of the Constitution of the State of California; and hence said 2,501 shares of said The National Bank of D. O. Mills & Co. were not and are not subject to said tax of one per centum for said fiscal year, and said tax of $6,278.67 assessed and levied on said 2,501 shares is unlawful and void.

Recapitulation.

Said tax of $6,278.67, assessed and levied as aforesaid upon said 2,501 shares, was and is unlawful and void, because:

1st. Said tax of $6,278.67 is a second tax on the same property for the same tax for the same fiscal year.

2nd. Said tax of $6,278.67 is a tax assessed and levied on personal property owned by said The Bank of California, National Association, to wit, on said 2,501 shares of the capital stock of said The National Bank of D. O. Mills & Co., contrary to the laws of the United States of America, and also contrary to the laws of the State of California.

18

3rd. Said tax of $155,315.88, assessed and levied on the shares of the capital stock of said The Bank of California, National Association, is in lieu of all other taxes, state, county and municipal, upon the property of said The Bank of California, National Association, and said 2,501 shares were not during any of the times aforesaid subject to taxation for said fiscal year and during said times were not taxable or subject to said tax of one per centum for said fiscal year, were not subject to said tax of $6,278.67 and were not subject to assessment for the purpose of taxing or imposing said

tax of one per centum on said assessed valuation thereof, to wit, on said sum of $627,867.00, for said fiscal year.

4th. The assessing and levying said tax of $6,278.67 on said 2,501 shares by said State Board of Equalization and the imposition of said tax of one per centum thereon for said fiscal year, lays or imposes upon said 2,501 shares and said assessed value thereof, to wit, said $627,867.00, a greater or heavier burden thereon than upon other moneyed capital in the hands of individual citizens of the State of California, and such taxation of said 2,501
19 shares is at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the State of California.

Dated, August 8th, 1911.

THE BANK OF CALIFORNIA,
NATIONAL ASSOCIATION,
By F. B. ANDERSON, *Its President.*
THE NATIONAL BANK OF
D. O. MILLS & CO.,
By C. F. STILLMAN, *Its President.*"

That after the said "Record of Assessments for State Taxes" for the said year 1911 had been delivered to said Controller as aforesaid and the said sum of $1,201.01059, the said taxes assessed and levied on said 1,049 shares of the capital stock of said The Mission Bank as aforesaid by said Board of Equalization, had become due or payable, the plaintiff paid to said Controller the said taxes, to wit, said sum of $1,201.01059, under protest in writing and filed the same with the said Controller at the time of the payment of said taxes;

20 That the following is a copy of said protest, to wit:

"To Hon. Alfred B. Nye, Controller of the State of California, and Hon. E. D. Roberts, Treasurer of the State of California.

SIRS: The sum of two thousand two hundred and eighty-nine and 82/100 dollars ($2,289.82), being the taxes assessed and levied for state purposes for the fiscal year ending June 30th, 1912, on all the shares of the capital stock of The Mission Bank, to wit, on 2,000 shares—of which 1,049 shares were, at twelve o'clock noon and prior thereto on the first Monday in March, 1911, and ever since have been owned by The Bank of California, National Association—is herewith paid, and of said sum of $2,289.82 the sum of $1,201.01059 is herewith paid under protest upon the following grounds:

The Mission Bank is and was at twelve o'clock noon on the first Monday in March, 1911, a corporation organized and existing under the laws of the State of California and doing a general banking business in the City and County of San Francisco, in the State of California.

The Bank of California, National Association, is and was at said time a corporation organized and existing under the "National

Bank Act" of the United States of America and doing a
21 general banking business in the City and County of San Francisco, in said State.

The authorized and issued capital stock of said Association is and was at said time 85,000 shares of the par value of $100.00 each.

After the first Monday in March, 1911, the value of said 85,000 shares of the capital stock of The Bank of California, National Association, was assessed by said State Board of Equalization—after deducting the value as assessed for county taxes of the real estate owned by said Association at twelve o'clock noon on the first Monday in March, 1911, and taxed for county purposes—at the sum of $15,531,588.00.

Thereafter said State Board of Equalization levied and assessed upon said 85,000 shares of the capital stock of said Association, for the fiscal year ending June 30th, 1912, a tax of one per centum upon the said assessed value of said 85,000 shares, to wit, upon said sum of $15,531,588.00, which tax amounted to and is the sum of $155,315.88.

After the first Monday in March, 1911, the value of all the shares of the capital stock of said The Mission Bank, to wit, 2,000 shares, was assessed by said State Board of Equalization at the sum of $228,982.00, and said 1,049 shares of said capital stock owned by said Association at twelve o'clock noon of the first Monday in March, 1911, were assessed by said State Board of Equalization at
22 the sum of $120,101.059; and thereafter said State Board of Equalization levied and assessed upon said 1,049 shares for the fiscal year ending June 30th, 1912, a tax of one per centum upon the said assessed value of said 1,049 shares, to wit, upon said sum of $120,101.06, which tax amounted to and is the sum of $1,201.01059.

In assessing the value as aforesaid of the 85,000 shares of the capital stock of said Association, said State Board of Equalization included in and made a part of said sum of $15,531,588.00 the said assessed value of said 1,049 shares of the capital stock of said The Mission Bank, to wit, said sum of $120,101.059.

Said State Board of Equalization, in levying and assessing for said fiscal year said tax of one per centum on said sum of $15,531,588.00 and also said tax of one per centum on said sum of $120,101.059, levied and assessed said tax of one per centum twice, and said 1,049 shares were thus doubly assessed and taxed for the same tax for the same fiscal year.

Said 1,049 shares of the capital stock of said The Mission Bank are personal property and were owned as aforesaid at and during all the times aforesaid and now are owned by said The Bank of California, National Association, and by and under the laws of the United States of America cannot be taxed by the State
23 of California and are not subject to taxation by and under the laws of the United States of America, by the said State.

The tax assessed and levied by said State Board of Equalization on the shares of the capital stock of said The Bank of California,

National Association, to wit, said tax or sum of $155,315.88, is by the Constitution of the State of California in lieu of all other taxes and licenses, state, county and municipal, upon the property of said The Bank of California, National Association, except county and municipal taxes and as otherwise provided in Section 14, Article 13, of the Constitution of the State of California; and hence said 1,049 shares of said The Mission Bank were not and are not subject to said tax of one per centum for said fiscal year, and said tax of $1,201.01059 assessed and levied on said 1,049 shares is unlawful and void.

Recapitulation.

Said tax of $1,201.01059, and the whole thereof, assessed and levied as aforesaid upon said 1,049 shares, was and is unlawful and void, because:

1st. Said tax of $1,201.01059 is a second tax on the same property for the same tax for the same fiscal year.

2nd. Said tax of $1,201.01059 is a tax assessed and levied on personal property owned by said The Bank of California,
24 National Association, to wit, on said 1,049 shares of the capital stock of said The Mission Bank, contrary to the laws of the United States and also contrary to the laws of the State of California.

3rd. Said tax of $155,315.88, assessed and levied on the shares of the capital stock of said The Bank of California, National Association, is in lieu of all other taxes, state, county and municipal, upon the property of said The Bank of California, National Association, and said 1,049 shares were not during any of the times aforesaid subject to taxation for said fiscal year and during said times were not taxable or subject to said tax of one per centum for said fiscal year, were not subject to said tax of $1,201.01059 and were not subject to assessment for the purpose of taxing or imposing said tax of one per centum on said assessed valuation thereof, to wit, on said sum of $120,101.059, for said fiscal year.

4th. The assessing and levying said tax of $1,201.01059 on said 1,049 shares by said State Board of Equalization and the imposition of said tax of one per centum thereon for said fiscal year, lays or imposes upon said 1,049 shares and said assessed value thereof, to wit, said $120,101.059, a greater or heavier burden thereon than upon other moneyed capital in the hands of individual citizens of the State of California, and such taxation of said 1,049 shares
25 is at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the State of California.

Dated, August 7th, 1911.

THE MISSION BANK,
By JAMES ROLPH, Jr.,
Its President.
THE BANK OF CALIFORNIA,
NATIONAL ASSOCIATION,
By F. B. ANDERSON, *Its President.*"

Wherefore, plaintiff prays judgment for the sum of $155,315.88, the tax paid on said 85,000 shares, for the sum of 6,278.67, the tax paid on said 2,501 shares, for the sum of $1,201.01, the tax paid on said 1,049 shares, for the sum of $4,697.62, the tax paid on said 30,000 shares, and for costs of suit.

JAMES M. ALLEN,
Attorney for the Plaintiff.

[Duly verified and filed February 16th, 1912.]

26 [Title of Court and Cause.]

Answer.

Now comes the above named Defendant and answering Plaintiff's complaint on file herein, alleges and denies as follows:

I.

Answering that portion of Plaintiff's complaint commencing with paragraph two, line twelve, page three of said complaint, Defendant denies that said State Board of Equalization between the first Monday in March and the third Monday before the first Monday in July in the year 1911, or at any other time or at all, again, and for the second time, assessed the said Two Thousand Five Hundred and One (2,501) Shares of the capital stock of the National Bank of D. O. Mills & Co., and valued the same for taxation for said year 1911 at Six Hundred Twenty-seven Thousand Eight Hundred Sixty-seven ($627,867) Dollars, and denies that said State Board of Equalization for said year 1911 or any other year again and the second time assessed and levied a tax upon such shares of one (1%) per centum, amounting to Six Thousand Two Hundred and Seventy-eight and Sixty-seven Hundredths ($6,278.67) Dollars
27 or any other sum or at all, and denies that said Board of Equalization for the second time assessed and taxed said Two Thousand Five Hundred and One (2,501) shares to the Plaintiff and denies that said State Board of Equalization at any time or at all or in any manner doubled the tax upon said Two Thousand Five Hundred and One (2,501) shares of said stock for said year of 1911 or compelled the Plaintiff to pay the same tax for the said year on Two Thousand Five Hundred and One (2,501) shares twice.

II.

Answering that portion of Plaintiff's complaint commencing with paragraph three, line twenty-seven, page three of said complaint, Defendant denies that said State Board of Equalization between the first Monday in March and the third Monday before the first Monday in July in the year 1911, or at any other time or at all, again and for the second time assessed the said One Thousand and Forty-

nine (1,049) shares of the capital stock of the Mission Bank and valued the same for taxation for said year 1911 at One Hundred Twenty Thousand One Hundred and One and Fifty-nine Thousandths ($120,101.059) Dollars, and denies that said Board
28 of Equalization for said year of 1911 again and a second time assessed and levied a tax upon said shares of stock of One (1%) per centum, amounting to One Thousand Two Hundred and One and One Hundred and Fifty-nine Ten Thousandths ($1,201.0159) Dollars, or at any other sum or at all, and denies that said Board, for the second time assessed and taxed said One Thousand and Forty-nine (1,049) shares of said stock to the Plaintiff, and denies that the tax upon said stock for the said year of 1911 was doubled, and denies that said Board compelled the Plaintiff to pay the said tax for the said year on said One Thousand and Forty-nine shares of stock twice.

Wherefore, Defendant prays that he be hence dismissed with his costs.

U. S. WEBB, *Attorney General.*
RAYMOND BENJAMIN,
Chief Deputy.

[Duly served and filed May 6th, 1912.]

29 [Title of Court and Cause.]

Judgment.

This action came on regularly for trial upon plaintiff's complaint and defendant's answer thereto before the Court—a jury having been waived by the said parties—James M. Allen appearing as Attorney for the plaintiff and U. S. Webb appearing as Attorney for the defendant.

And the Court having heard the evidence introduced by the respective parties and the arguments of counsel, the action was submitted to the Court for consideration and decision.

And now on this 3d day of March, 1913, after deliberation and the waiving of findings of fact and conclusions of law by said parties, it is ordered by the Court that judgment be entered for the plaintiff and against the defendant for the sum of Six Thousand Two Hundred Seventy-eight and 67/100 Dollars ($6,278.67), the tax on twenty-five hundred (2500) shares of the Capital Stock of The National Bank of D. O. Mills & Co., mentioned in the complaint in said action, and the sum of One Thousand Two Hundred One and 01/100 Dollars ($1,201.01), the tax on one thousand and forty-nine (1049) shares of the Capital Stock of The Mission Bank, mentioned in said complaint.

30 Wherefore, in consideration of the premises, it is ordered and adjudged that the said plaintiff, do have and recover of and from the said defendant the sum of Seven Thousand Four Hundred Seventy-nine and 68/100 Dollars ($7,479.68), together

with said plaintiff's costs and disbursements herein, amounting to the sum of Twenty-seven and 30/100 Dollars.

GEO. A. STURTEVANT, *Judge.*

[Duly filed and Recorded in Book 61, page 403, March 3rd, 1913.]

[Title of Court and Cause.]

Bill of Exceptions.

Be it remembered that this cause came on regularly for trial on the 6th day of August, 1912, before the Court, without a jury, and Honorable George A. Sturtevant, Judge of said Court. The plaintiff appeared by James M. Allen, Esq., its attorney, and the defendant by U. S. Webb, Attorney General, and Raymond Benjamin, Chief Deputy Attorney General, his attorneys. Thereupon, the following proceedings were had:

No evidence was introduced, and the plaintiff, by its attorney, withdrew from the consideration of the Court all matters connected with the Thirty Thousand (30,000) shares of the capital
31 stock of the San Francisco and Fresno Land Company, a corporation, owned by plaintiff and specified in the complaint of plaintiff on the file herein, and abandoned its demand for any refund of tax or judgment for tax based upon or in connection with the stock of said San Francisco and Fresno Land Company.

Thereupon plaintiff moved for judgment upon the pleadings in the case, and said motion was submitted to the Court for its decision upon the complaint of plaintiff and the answer of defendant to plaintiff's complaint on file herein.

Thereafter, said motion and cause was submitted to the Court for its decision.

The foregoing is all of the evidence and proceedings had upon the trial of this action. Thereafter, to wit, on the 3rd day of March, 1913, the Court rendered and filed its decision in writing, and made and rendered its judgment in favor of the plaintiff and against the defendant.

Thereafter, and within the time allowed by law, and the stipulations of the parties, the defendant prepared and duly served upon plaintiff his proposed bill of exceptions herein to be used upon his appeal from the judgment, wherein he specified, and now specifies, the following particulars in which the evidence is insufficient
32 to support or justify the said decision, and the errors in law occurring upon the trial and excepted to as follows:

I.

That the evidence consisting of the allegations of the complaint and the admissions and allegations of the answer is insufficient to support or justify the judgment of the Court that the plaintiff do have and recover from the said defendant the sum of Seven thou-

sand four hundred seventy-nine and 68/100 dollars ($7,479.68), together with plaintiff's costs and disbursements herein, amounting to the sum of Twenty-seven and 30/100 dollars ($27.30).

The foregoing bill of exceptions is correct, and may be settled and allowed by the Court as the bill of exceptions to be used by defendant upon his appeal from the judgment herein.

JAMES M. ALLEN,
By F. D. MADISON,
Attorney for Plaintiff.
U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Chief Deputy Attorney General,
Attorneys for Defendant.

33 The foregoing bill of exceptions presented to me this 30th day of April, 1913, is hereby settled, allowed, and approved.

GEORGE A. STURTEVANT.
Judge of the Superior Court.

[Filed May 1, 1913.]

[Title of Court and Cause.]

Notice of Appeal.

To the Clerk of the above entitled Court and to the plaintiff, the Bank of California, National Association, a corporation, and its attorney, James M. Allen, Esq.:

You, and each of you, will take notice, and you are hereby notified, that the above named defendant, E. D. Roberts, as Treasurer of the State of California, hereby appeals to the Supreme Court of the State of California, from the judgment in the above entitled action rendered in favor of plaintiff and against defendant herein.

Said judgment to which reference is hereby made bears date the 3rd day of March, 1913, and was entered on March 3rd,
34 1913, in Book 61 of Judgments, at page 403, records of the above entitled Superior Court.

Dated this 1st day of May, 1913.

U. S. WEBB,
Attorney General of the State of California;
RAYMOND BENJAMIN,
Chief Deputy Attorney General,
Attorneys for Defendant.

[Duly served and filed May 1st, 1913.]

Stipulation.

It is hereby stipulated that the foregoing Transcript on Appeal contains a true copy of the judgment roll in said action, the Bill of Exceptions settled therein, and the Notice of Appeal served and filed and that said Transcript may be used on the hearing of said appeal.

U. S. WEBB, *Attorney General;*
RAYMOND BENJAMIN,
Chief Deputy Attorney General,
Attorneys for Appellant.
PILLSBURY, MADISON & SUTRO,
Attorneys for Respondent, Who Hereby Appear for said Respondent as Attorneys in Place of James M. Allen, Deceased.

35 Received a copy of the within transcript this 23rd day of May, 1913.

PILLSBURY, MADISON & SUTRO,
Attorneys for Respondent.

36 In the Supreme Court of the State of California.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION, a Corporation, Plaintiff and Respondent,

v.

E. D. ROBERTS, as Treasurer of the State of California, Defendant and Appellant.

Appeal from the Superior Court of the City and County of San Francisco, Geo. A. Sturtevant, Judge.

For Appellant: U. S. Webb, Attorney General; Raymond Benjamin, Chief Deputy Attorney General.
For Respondent: Pillsbury, Madison & Sutro, A. E. Roth, A. D. Plaw.

Plaintiff brought this action to recover taxes paid under protest, and recovered judgment for $7,479.68. The defendant appeals from the judgment, which was rendered on the pleadings.

The plaintiff is a banking corporation organized under the National Banking Act of the United States. It has a capital stock of 85,000 shares, of the par value of $100 each. In the year 1911, the state board of equalization assessed these 85,000 shares at the sum of $15,531,588 and assessed and levied a tax of 1 per centum thereon.

During the year 1911, the plaintiff was the owner of 2501 shares of the capital stock of The National Bank of D. O. Mills & Co., like-

wise a corporation organized under said National Bank Act.
37 It was also the owner of 1049 shares of the capital stock of The Mission Bank, a banking corporation organized under the laws of the State of California. The board of equalization, in assessing the 85,000 shares of the capital stock of the plaintiff, included in its valuation the value of the 2501 shares of stock in The National Bank of D. O. Mills & Co. and the value of the 1049 shares of stock in The Mission Bank.

The shares of stock of The National Bank of D. O. Mills & Co. and of The Mission Bank were assessed in like manner by the state board of equalization, and the tax was levied upon all of the shares of these banks, including those owned by the plaintiff.

The plaintiff claimed that this course of procedure resulted in a double taxation of the shares of stock in the two banks owned by it, and applied to the board of equalization to exclude from the assessment of its shares the value of the said shares of the two other banks. This application having been denied, the plaintiff paid its tax under protest. The tax on the 2501 shares of the stock of The National Bank of D. O. Mills & Co. amounted to $6,278.67. The tax upon the 1049 shares of The Mission Bank came to $1,201.01. These sums having been paid under protest, the plaintiff brought this action to recover them.

The taxes here involved were levied in accordance with the provisions added to the constitution by the amendments adopted in November, 1910. (Art. XIII, Sec. 14.) As we have heretofore said, these amendments "worked a radical change in the system of taxation in this state. Broadly speaking, the purpose of the change, as is well known, was to divide the subjects of state and local taxation by imposing upon persons and corporations engaged in certain callings—those of public service corporations, insurance companies, banks and trust companies—the obligation to pay certain
38 taxes to be applied exclusively to state purposes. At the same time, the persons engaged and the property employed in these callings were, to a greater or less degree, to be free from the burden of local taxation. * * * Under the old system the property and franchises of the corporations above referred to were taxed for both state and local purposes. The amendment creates a new mode of taxing such property and franchises, and appropriates the revenue so raised to state purposes solely". (City and County of San Francisco v. Pacific Tel. & Telegraph Co., 166 Cal. 244, 247.) Subdivision (*c*) of section 14, thus added to the constitution, provides in detail for the method of assessing and taxing banks. It is provided that the shares of the capital stock of all banks incorporated under the laws of any state or of the United States and located in this state shall be assessed and taxed to the owners or holders thereof by the state board of equalization, and that there shall be levied and assessed upon such shares an annual tax, payable to the state, of one per centum upon the value thereof. The value of each share of stock is to be taken to be the amount paid in thereon, together with its pro rata of the accumulated surplus and undivided profits. In reaching this result, deduction is to be made of the value of real estate owned

by the bank and taxed for county purposes. It is provided that the banks shall pay the tax to the state on behalf of the stockholders and shall have a lien upon the shares and any dividends to secure the amount so paid.

This subdivision contains a detailed and comprehensive scheme for the valuation of the shares of stock of banks. It declares that the value shall be taken to be the amount paid in on the stock, 39 together with the pro rata of the accumulated surplus and undivided profits. Provision is made for the deduction of one item of property, to wit: real estate taxed for county purposes. No other deduction is directed to be made, and it seems clear, under the most familiar rules of interpretation, that none other was contemplated. So far as the face of the constitutional provision goes, the value of the shares is to be computed by including, in addition to the amount paid in on the stock, every item of property embraced within accumulated surplus and undivided profits, with the single exception of real estate taxed for county purposes. The board of equalization acted, therefore, in strict compliance with the constitutional method when it fixed the value of the shares of stock in the plaintiff bank by taking the amount paid in, together with the pro rata of the accumulated surplus and undivided profits, subject to a deduction of the value of the designated real estate alone. The shares of stock in other corporations, whether engaged in banking or other business, were necessarily included in determining the amount on which this pro rata was to be reckoned. Similarly, in fixing the value of the shares of stock in The National Bank of D. O. Mills & Co. and in The Mission Bank, the board was required to follow the same course. Its ascertainment of the value of the shares of stock in those banks, by whomever owned or held, was reached by adding to the amount paid in the pro rata of the accumulated surplus and undivided profits of the respective banks after making the deduction of real estate.

The respondent claims that, by a long line of decisions beginning with Burke v. Badlam (57 Cal. 594), this court has established the doctrine that the sum total of the value of the shares of 40 stock in a corporation is the equivalent of the value of all of the property of every kind, including franchises, owned by the corporation. (Spring Valley Water Works v. Schottler, 62 Cal. 69, 115 et seq.; City and County of San Francisco v. Anderson, 103 Cal. 69; People v. National Bank of D. O. Mills & Co., 123 Cal. 53, 60; Bank of California v. San Francisco, 142 Cal. 276; Crocker v. Scott, 149 Cal., 575.) It was upon this theory that the court held that section 3608 of the Political Code, prohibiting any assessment of the shares of stock of state corporations, was not in conflict with section 1, article XIII, of the constitution which declared that all property should be taxed in proportion to its value, and defined the word "property" as including, among other things, "stocks". (Burke v. Badlam, supra.) The cases have, for their foundation, the proposition that an assessment and taxation of every item and element of property owned by the corporation and giving value to its stock is, in effect, an assessment and taxation of the stock itself. And, basing

its argument upon this proposition, the plaintiff bank contends that when the shares of stock issued by it are assessed and taxed upon a valuation which includes the value of shares of stock owned by it in other banks, and those shares are again assessed upon a separate ascertainment of their value, the state is undertaking to tax the same property twice. On the other hand, the appellant argues that there is not, in reality, any question of double taxation here. In assessing the shares of stock in the plaintiff, a tax is imposed upon the owners and holders of those shares. The plaintiff pays the tax only on behalf of the holders. In assessing the shares of stock in The National Bank of D. O. Mills & Co. and The Mission Bank, the tax is imposed not upon those banks, but upon the holders of the shares, whoever they may be. The plaintiff as one of such holders is, so
41 the appellant contends, no more entitled to exemption from the tax than is any other shareholder. The Supreme Court of the United States has consistently held that a tax upon the shares is not the equivalent of a tax upon the capital of the bank (see Owensboro N. B. v. Owensboro, 173 U. S. 677, and cas. cit.), and that the state may properly impose a tax upon the full value of the shares of stock in a national bank, regardless of the fact that the property of the bank, which gives those shares their value, may be in part composed of bonds of the United States or other property exempt from taxation. (Van Allen v. Assessors, 3 Wall., 573; People v. Tax Com'rs, 4 Wall. 244.)

We need not stop to inquire whether these decisions proceed upon a theory in conflict with the views announced by this court in Burke v. Badlam and subsequent decisions to like effect. Let it be assumed that the assessment here complained of did result in double taxation. In the absence of express constitutional provision, there is, however, no necessary or inherent objection to taxing the same property twice to different persons "so long at least, as there is some kind of estate or right, in both persons taxed, to the taxed property." (Gray on Limitation of Taxing Power, secs. 1361, 1363; Cooley on Taxation, 3rd ed., p. 389 et seq.) Such taxation does not contravene any provision of the federal constitution. "It is no doubt within the power of a state, when not restrained by constitutional limitations, to assess taxes upon them" (i. e., property of the corporation and shares of stock in the hands of the individual stockholders), "in a way to subject the corporation or the stockholders to double taxation." (Tennessee v. Whitworth, 117 U. S. 129, 136-7.)

42 Does the constitution of California prohibit such double taxation as may be involved in the assessment here complained of? No doubt our constitution, as it stood prior to the amendments of 1910, did contain such prohibition. Section 1 of article XIII, as it originally read, provided that "All property in the state, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law." This is the language which was held, in the cases above cited, to forbid double taxation. "All property" is not taxed in proportion to its value if some of it is taxed once and some of it more than once upon the ascertained value. (Burke v. Badlam, supra.) But when

the new system of taxing certain corporations for state purposes was embodied in the constitution, section 1 was also amended. That section was made to read as follows: "All property in the state *except as otherwise in this constitution provided*, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, *or as hereinafter provided.*" The change consisted in the addition of the italicized words. Here is an express declaration that the general rule requiring property to be taxed in proportion to its value shall be subject to the qualification that such proportionate method of taxation shall not apply where the constitution makes other provision. It has, as we have seen, made other provision for the assessment of bank property. The respondent claims that the words "except as otherwise in this constitution provided" qualify merely the subject of the sentence, to wit: "all property in the state." In other words, the contention is that this qualifying clause was meant to cover only the exemptions specifically provided for in section 1 and subsequent sections of article XIII.

43 This is a strained interpretation of the language. The amendments to section 1 and to section 14 were proposed and adopted at the same time, and there can be no doubt that the changes formed parts of a single comprehensive scheme. The plan of section 14 is in various respects inconsistent with the idea that the property therein described shall be assessed in proportion to its value. The taxes levied, while described as taxes upon the property of corporations, are not based upon any mode of ascertaining either the proportionate or the absolute value of such property. Thus, in subdivision *a*, railroad, telegraph, telephone, gas or electric and certain other companies are subjected to a tax of a certain percentage of their gross receipts from operations within this state. Subdivision *b* imposes upon insurance companies a tax of one and one-half per cent upon the amount of the gross premiums received. Such taxes cannot upon any fair construction be said to comply with a requirement that all property shall be taxed in proportion to its value. Surely it was not believed, when section 14 was adopted, that the method of taxation therein provided for should be limited or controlled by any general provision such as that theretofore contained in section 1. The amendment of section 1 was designed to avoid any possible conflict with section 14. Even if, however, there should be any opposition between the general terms of section 1 and the provisions of section 14, the latter, as the more specific and particular enactment, would prevail.

The respondent makes a further point. Since national banks constitute an agency of the United States, created for the carrying out of governmental purposes, property of such banks and shares of stock in the same cannot be taxed by a state except in so far as such

44 taxation is permitted by act of Congress. The requisite permission is granted by section 5219 of the Revised Statutes. That section authorizes the several states to include all the shares of national banks in the valuation and assessment of personal property of the owner or holder of such shares, subject to the restrictions (1) that the tax shall not be at a greater rate than is assessed upon other

moneyed capital, and (2) that shares owned by non-residents of the state shall be taxed in the city or town where the bank is located. The claim is made that this statute does not authorize the assessment of the personal property of national banks to the banks, and that the state is not, therefore, authorized to assess to the plaintiff, through The Mission Bank, the plaintiff's shares in that bank. In Bank of Redemption v. Boston, 125 U. S. 60, it was decided by the Supreme Court of the United States that section 5219 of the Revised Statutes does not prevent the taxation of the shares of a national bank in the hands of another national bank. No different rule could be applied to the taxation of shares in a state bank owned by a national bank without violating the provision of section 5219 requiring "other moneyed capital" to be assessed at a rate equal to that imposed upon shares in national banks. If the section authorizes the taxation of shares owned by a national bank in another national bank, it must necessarily contemplate a like taxation of shares in state banks similarly owned.

The judgment is reversed.

SLOSS, *J.*

We concur:

SHAW, *J.*
HENSHAW, *J.*
MELVIN, *J.*
LORIGAN, *J.*
ANGELLOTTI, *C. J.*
LAWLOR, *J.*

45 [Endorsed:] S. F. No. 6602. In the Supreme Court of the State of California. The Bank of California, National Association, a corporation, Plaintiff & Respondent, vs. E. D. Roberts, as Treasurer of the State of California, Defendant & Appellant. Opinion and judgment of the Supreme Court of the State of California. Filed Sept. 21, 1916. B. Grant Taylor, Clerk, By I. Erb, Deputy.

46 In the Supreme Court of the State of California. In Bank.

S. F. 6602.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION (a Corporation), Plaintiff & Respondent,

vs.

E. D. ROBERTS, as Treasurer of the State of California, Defendant & Appellant.

By the COURT:

Rehearing denied, October 20th, 1916.

ANGELLOTTI, *C. J.*

47 [Endorsed:] S. F. No. 6602. In the Supreme Court of the State of California. In Bank. The Bank of California, National Association (a corporation), Plaintiff and Respondent, vs. E. D. Roberts, as Treasurer of the State of California, Defendant and Appellant. Order denying rehearing.

48 In the Supreme Court of the State of California.

S. F., No. 6602.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION, a Corporation, Plaintiff and Respondent,

vs.

E. D. ROBERTS, as Treasurer of the State of California, Defendant and Appellant.

Assignment of Errors on Writ of Error to the Supreme Court of the United States.

Now comes The Bank of California, National Association, plaintiff and respondent in the above cause, and plaintiff in error to the Supreme Court of the United States, by its attorneys, and files herewith its petition for Writ of Error, and avers and shows:

That, in the records and proceedings in the above entitled cause, the Supreme Court of the State of California erred, to the grievous injury and wrong of plaintiff in error, and to the prejudice and against the rights of plaintiff in error and, for the purpose of having said proceedings in the above entitled cause reviewed in the Supreme Court of the United States, plaintiff in error presents the following assignment of errors and prayer for reversal of the decision in the above entitled cause in this Court, by the Supreme Court of the United States:

49 First. The Supreme Court of the State of California erred in reversing the judgment in favor of the plaintiff in said cause, in the Superior Court of the State of California in and for the City and County of San Francisco; and in refusing to affirm said judgment.

Second. The Supreme Court of the State of California erred in holding and deciding that the law of the State of California, in requiring and permitting the taxation to plaintiff in error, by said State, of the shares of the capital stock of The Mission Bank, a California corporation, owned by plaintiff in error, was not in contravention of Section 5219 of the Revised Statutes of the United States.

Third. The Supreme Court of the State of California erred in holding and deciding that Section 5219 of the Revised Statutes of the United States confers the power upon the State of California to tax to plaintiff in error the said shares of The Mission Bank, owned by plaintiff in error.

Fourth. The Supreme Court of the State of California erred in

holding and deciding that, because Section 5219 of the Revised Statutes of the United States authorizes the State of California to tax to plaintiff in error the shares of the capital stock of The National Bank of D. O. Mills & Co., owned by plaintiff in error, it follows that said Section 5219 authorizes the taxation to plaintiff in error of the shares of the capital stock of The Mission Bank, owned by plaintiff in error.

Fifth. The Supreme Court of the State of California erred in not holding and deciding that, as the shares of The Mission Bank, owned by plaintiff in error, cannot be taxed to it by the State, the
50 attempted double taxation under the State law of the value of the shares of the capital stock in The National Bank of D. O. Mills & Co., owned by plaintiff in error, is an unlawful discrimination against the latter shares and, consequently, void under Section 5219 of the Revised Statutes.

Sixth. The Supreme Court of the State of California, in upholding the State law providing for the taxation to plaintiff in error of the shares of The Mission Bank, owned by it, failed to give effect to the last clause of Section 8 of Article I of the Constitution of the United States.

Seventh. The Supreme Court of the State of California, in upholding the State law providing for the taxation to plaintiff in error, and to its stockholders, of the value of the shares of The National Bank of D. O. Mills & Co., owned by it, failed to give effect to the last clause of Section 8 of Article I of the Constitution of the United States.

And by reason of the foregoing errors and holdings, plaintiff in error prays that the said judgment of the Supreme Court of the State of California may be reversed by the Supreme Court of the United States, and that a mandate be issued directing said Supreme Court of the State of California to enter its judgment affirming the judgment, in said cause, of the Superior Court of the State of California, in and for the City and County of San Francisco; and also, that a decree be entered in favor of the plaintiff in error for its costs and disbursements; and that it may be restored to all things which it has lost by reason of said judgment of the Supreme Court of the State of California.

Dated this 6th day of December, 1916.

PILLSBURY, MADISON & SUTRO,
A. E. ROTH,
A. D. PLAW,
Attorneys for Respondent and Plaintiff in Error.

51 [Endorsed:] Copy. No. S. F. 6602. Supreme Court, State of California. The Bank of California, National Association, a corporation, Plaintiff and Respondent, vs. E. D. Roberts, as Treasurer of the State of California, Defendant and Appellant. Assignment of Errors on Writ of Error to the Supreme Court of the United States. Filed Dec. 6, 1916. B. Grant Taylor, Clerk, by —— ——, Deputy. Pillsbury, Madison & Sutro, A. E. Roth, and A. D. Plaw, Attorneys at Law, Standard Oil Building, San Francisco, Cal.

52 In the Supreme Court of the United States.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION, a Corporation, Plaintiff in Error,

vs.

E. D. ROBERTS, as Treasurer of the State of California, Defendant in Error.

Bond on Writ of Error.

Know all men by these presents:

That The Bank of California, National Association, a national banking association, organized and existing under and by virtue of the National Bank Act of the United States, as principal, and National Surety Company, a corporation, duly organized and existing under the laws of the State of New York, as surety, are held and firmly bound unto the above named E. D. Roberts, as Treasurer of the State of California, in the sum of $1,000.00, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our, successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated this 6th day of December, 1916.

53 Whereas the above named plaintiff in error seeks to prosecute its Writ of Error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the said Supreme Court of the State of California:

Now, therefore, the condition of this obligation is such that, if the above named plaintiff in error shall prosecute such Writ of Error to effect and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

THE BANK OF CALIFORNIA,
NATIONAL ASSOCIATION,
By I. F. MOULTON,
Vice-President and Cashier.

[CORPORATE SEAL.] NATIONAL SURETY COMPANY,
By FRANK D. GILBERT,
Its Attorney-in-Fact.

The above bond is approved this 6th day of December, 1916.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this sixth day of December in the year one thousand nine hundred and sixteen, before me, Julius Calmann, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared Frank L. Gilbert known to me to be the person whose name is subscribed to the within instrument as the Attorney in fact of the National Surety Company, the corporation described in the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and the said Frank L. Gilbert acknowledged to me that he subscribed the name of the National Surety Company thereto as principal and his own name as Attorney in fact.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, State of California, the day and year in this certificate first above written.

[NOTARIAL SEAL.] JULIUS CALMANN,
Notary Public in and for the City and County of San Francisco, State of California.

54 [Endorsed:] Office Copy. In the Supreme Court of the United States. S. F. 6602. The Bank of California, National Association, a corporation, Plaintiff in Error, vs. E. D. Roberts, as Treasurer of the State of California, Defendant in Error. Bond on Writ of Error. Filed Dec. 6, 1916. B. Grant Taylor, Clerk, by ——— ———, Deputy. Pillsbury, Madison & Sutro, A. E. Roth and A. D. Plaw, Attorneys at Law, Standard Oil Building, San Francisco, Cal.

55 In the Supreme Court of the State of California.

S. F., No. 6602.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION, a Corporation, Plaintiff and Respondent,

vs.

E. D. ROBERTS, as Treasurer of the State of California, Defendant and Appellant.

Petition for Writ of Error.

Comes now The Bank of California, National Association, the above named plaintiff and respondent, and petitioner herein, and shows to this Honorable Court:

That, heretofore and on the 21st day of September, 1916, a judgment was entered, in the above cause, by the above named Supreme Court of the State of California, against your petitioner, the above

named plaintiff and respondent, and in favor of the above named defendant and appellant, reversing the judgment of the Superior Court of the State of California, in and for the City and County of San Francisco, as will appear by the record and proceedings in said cause, in which said judgment of the said Supreme Court of the State of California, in said cause, certain errors were committed to the prejudice of your petitioner, all of which will, in more detail, appear from the assignment of errors which is filed with this petition.

Wherefore, this plaintiff and respondent, the petitioner
56 herein, prays that a Writ of Error issue in this behalf, returnable in the Supreme Court of the United States, for the correction of the errors complained of; that all further proceedings in the above entitled cause, in this Court, and in all inferior Courts of the State of California, be suspended, stayed and superseded until the determination of said Writ of Error by said Supreme Court of the United States; and that a duly authenticated transcript of the record and proceedings in this cause may be sent to the Supreme Court of the United States.

Dated this 6th day of December, 1916.

PILLSBURY, MADISON & SUTRO,
A. E. ROTH,
A. D. PLAW,
Attorneys for Petitioner.

STATE OF CALIFORNIA,
Supreme Court, ss:

Let the Writ of Error, above prayed for, issue upon the execution of a bond by The Bank of California, National Association, to E. D. Roberts, as Treasurer of the State of California, in the sum of $1,000.00; said bond, when approved, to act as a supersedeas.

Dated this 6th day of December, 1916.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court of the State of California.

57 [Endorsed:] Original. No. S. F. 6602. Supreme Court, State of California. The Bank of California, National Association, a corporation, Plaintiff and Respondent, vs. E. D. Roberts, as Treasurer of the State of California, Defendant and Appellant. Petition for Writ of Error. Filed Dec. 6, 1916. B. Grant Taylor, Clerk, by Erb, Deputy. Pillsbury, Madison & Sutro, A. E. Roth, and A. D. Plaw, Attorneys at Law, Standard Oil Building, San Francisco, Cal.

58 In the Supreme Court of the United States.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION, a Corporation, Plaintiff in Error,

vs.

E. D. ROBERTS, as Treasurer of the State of California, Defendant in Error.

Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of California, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of California before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said action between The Bank of California, National Association, plaintiff and plaintiff in error, and E. D. Roberts, as Treasurer of the State of California, defendant and defendant in error, wherein
59 was drawn into question the validity of a statute of, or an authority exercised under, the State of California, on the ground of their being repugnant to the Constitution and laws of the United States and the decision was in favor of their validity, and was against the title, right, privilege or immunity, especially set up or claimed by said plaintiff in error under the Constitution of the United States and a statute thereof, a manifest error hath happened to the great damage of the said The Bank of California, National Association, as by its complaint appears:

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this Writ, so that you may have the same at Washington, D. C., on the 4th day of February, next, in said Supreme Court, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief
60 Justice of the United States, this 6th day of December, 1916.

WALTER B. MALING,
Clerk of the District Court of the United States in and for the Northern District of California,
By J. A. SCHAERTZER,
Deputy Clerk.

[Seal of the U. S. District Court, Northern Dist. of California.]

Allowed this 6th day of December, 1916.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court
of the State of California.

61 [Endorsed:] Original. S. F. 6602. In the Supreme Court of the United States. The Bank of California, National Association, a corporation, Plaintiff in Error, vs. E. D. Roberts, as Treasurer of the State of California, Defendant in Error. Writ of Error. Filed Dec. 6 1916. B. Grant Taylor, Clerk, by Erb, Deputy. Pillsbury, Madison & Sutro, A. E. Roth and A. D. Plaw, Attorneys at Law, Standard Oil Building, San Francisco, Cal.

62 In the Supreme Court of the United States.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION, a Corporation, Plaintiff in Error,

vs.

E. D. ROBERTS, as Treasurer of the State of California, Defendant in Error.

Citation on Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to E. D. Roberts, as Treasurer of the State of California, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States, at Washington, D. C., within sixty (60) days from the date hereof, pursuant to a Writ of Error filed in the office of the Clerk of the Supreme Court of the State of California, wherein The Bank of California, National Association, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said Writ of Error mentioned, should not be corrected and why speedy justice should not be done the
63 parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of California, this 6th day of December, 1916.

F. M. ANGELLOTTI,
Chief Justice of the Supreme Court
of the State of California.

[Seal Supreme Court of California.]

Attest:

B. GRANT TAYLOR,
Clerk of the Supreme Court of
the State of California.

The undersigned, attorneys of record for the defendant in error in the above entitled cause, hereby acknowledge due service of the above citation this 7th day of December, 1916.

U. S. WEBB,
Attorney General for the State of California:
RAYMOND BENJAMIN,
Chief Deputy Attorney General
for the State of California,
Attorneys for Defendant in Error.

64 [Endorsed:] Original. S. F. 6602. In the Supreme Court of the United States. The Bank of California, National Association, a corporation, Plaintiff in Error, vs. E. D. Roberts, as Treasurer of the State of California, Defendant in Error. Citation on Writ of Error. Filed Dec. 7, 1916. B. Grant Taylor, Clerk, by Erb, Deputy. Pillsbury, Madison & Sutro, A. E. Roth and A. D. Plaw, Attorneys at Law, Standard Oil Building, San Francisco, Cal.

65 *Extract from Brief of the Bank of California, N. A., Filed in the Supreme Court of the State of California.*

The State is without power to tax the shares of the Mission Bank owned by the Bank of California.

It is thoroughly settled that a national bank cannot be taxed by the states at all, except to the extent that taxation thereof is permitted by Congress; and by Section 5219 of the Revised Statute of the United States the only permission granted by Congress to the states is to tax real property of such banks to the banks, and to tax the value of the shares to the holders thereof.

See

People v. National Bank, 123 Cal. 53;
First National Bank v. San Francisco, 129 Cal. 96;
Owensboro National Bank v. Owensboro, 173 U. S. 664;
First National Bank v. Albright, 208 U. S. 552.

The language of Section 5219 of the Revised Statutes is:

"Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the state within which the association is located, etc."

As this section does not limit the owners or holders of shares of national associations, who may be thus taxed, to owners or
66 holders other than national associations, it has been held by the Federal Supreme Court (in the case cited by appellant), that this section is a grant of power to the states to tax all shares of a national bank, although owned or held by another national bank.

Bank of Redemption v. Boston, 125 U. S. 60, 69.

Under this decision, the stock of the Mills Bank, owned by The Bank of California, is subject to taxation by the state against re-

spondent (provided that the assets represented by those shares have not, as in the case at bar, already been taxed), because that stock is issued by a national bank.

But the stock of the Mission Bank, owned by The Bank of California, is not subject to taxation against the latter at all, because the Mission Bank is not a national association; and Congress has not permitted taxation by the states of any personal property to national banks, except shares of stock owned by them in other national associations.

Any suggestion that, as a result of this conclusion, the shares of the Mission Bank owned by The Bank of California would escape taxation, is of no force, for two reasons:

First. Because taxation of national banks is a matter entirely within the discretion of Congress; and, second, because the assets of the Mission Bank, which measure the value of its shares, can be reached by the state's taxing those assets directly.

67 [Endorsed:] S. F. 6602. Extract from Brief of the Bank of California, N. A., Filed in the Supreme Court of the State of California.

68 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing transcript contains a full, true and complete copy of the record of the within entitled action, filed with our Supreme Court as the Transcript on Appeal from the judgment of the Superior Court of the State of California, in and for the City and County of San Francisco, from which said appeal was taken; that, upon said transcript, said appeal was heard; and that the foregoing transcript also contains a full, true and complete copy of the judgment of our Supreme Court, entered on said appeal on the 21st day of September, 1916.

I further certify that the foregoing transcript likewise contains full, true and complete copies of the opinion filed, upon which said judgment of our said Supreme Court was entered on the 21st day of September, 1916, and of the order of our Supreme Court, denying the petition for rehearing filed on behalf of The Bank of California, National Association, respondent therein; which said order was entered on October 20th, 1916.

I further certify that the Assignment of Errors and Prayer for Reversal, Bond on Writ of Error and its Approval, Subdivision III of "Brief for Respondent", entitled, "The State is without power to tax the shares of The Mission Bank, owned by The Bank of California", all of which are attached to the above and foregoing, have been by me compared with the originals thereof, and that they are true and correct copies of such originals, as the same appear of record and on file in my office and in my custody.

69 I further certify that the Petition for Writ of Error and Allowance thereof, Writ of Error and allowance thereof, and

Citation with service endorsed thereon, all of which are attached to the above and foregoing, are the original Petition for Writ of Error, Writ of Error and Citation, lodged with and filed in my office; and that the foregoing transcript is a full, true and correct copy of all of the papers and pleadings filed and of the proceedings had in the above entitled cause in our said Court, as the same appear of record and on file in my office.

I further certify that, by written stipulation filed with me, the respective counsel of record for the within named Plaintiff in Error and the within named Defendant in Error agreed that the portions of the record, hereinabove set forth, should constitute the transcript of the record on Writ of Error.

I further certify that the cost of the foregoing return to Writ of Error is $12.00 and that the said amount has been heretofore paid by me by Messrs. Pillsbury, Madison & Sutro, Attorneys for the Plaintiff in Error.

In witness whereof, I have hereunto set my hand and the seal of the Supreme Court of the State of California at my office in the City and County of San Francisco, in said State, this 9th day of January, 1917.

[Seal Supreme Court of California.]

B. GRANT TAYLOR,
Clerk of the Supreme Court of the State of California,
By I. ERB, *Deputy Clerk.*

UNITED STATES OF AMERICA,
Supreme Court of California, ss:

In obedience to the commands of the within writ, I here-
70 with transmit to the Supreme Court of the United States a duly certified transcript of a true copy of the record and of the Assignment of Errors, and of all proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of the said Supreme Court of the State of California, in the City and County of San Francisco, in said State, this 9th day of January, 1917.

[Seal Supreme Court of California.]

B. GRANT TAYLOR,
Clerk of the Supreme Court of the State of California,
By I. ERB, *Deputy Clerk.*

71 In the Supreme Court of the State of California. Bank.

San Francisco, No. 6602.

THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION (a Corporation), Pl't'ff & Resp.,

vs.

E. D. ROBERTS, as Treasurer of the State of California, Def't & App't.

On Appeal from the Superior Court in and for the City and County of San Francisco.

The above entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It is ordered, adjudged, and decreed by the Court that the Judgment of the Superior Court in and for the City and County of San Francisco in the above entitled cause, be and the same is hereby reversed, Appellant to recover costs of appeal.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 21st day of September, 1916, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 23rd day of October, A. D. 1916.

B. GRANT TAYLOR, *Clerk*,
[SEAL.] By A. S. RAMAGE, *Deputy*.

72 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing document constitutes a full, true and complete copy of the judgment of the Supreme Court of the State of California, rendered on the appeal in the within entitled cause, in the within entitled Court, on the 21st day of September, 1916, as the same was entered and appears in Book 27 of Judgments (the pages of said book not being numbered) in the records of said Court in my office.

I do hereby further certify that the closing sentence, "the judgment is reversed", as contained in the opinion of the within entitled Court, on file in my office, a true copy of which said opinion is annexed to my return to the Writ of Error, heretofore issued in the within entitled cause, out of the Supreme Court of the United States to the Supreme Court of the State of California, constituting the original record, in my office, of said judgment of the within entitled Court, which said judgment is referred to as the "original judgment" in the certificate, which is a part of the foregoing document.

I do hereby further certify that the records of said judgment,

hereinbefore in this certificate mentioned, are the only records of the said judgment in my office.

In witness whereof, I have hereunto set my hand and the seal of the Supreme Court of the State of California, at my office in the City and County of San Francisco, in said State, this 25th day of January, 1917.

[Seal Supreme Court of California.]

B. GRANT TAYLOR,
Clerk of the Supreme Court of the State of California.

73 [Endorsed:] S. F. No. 6602. In the Supreme Court of the State of California. The Bank of California, National Association (a corporation), Plaintiff and Respondent, vs. E. D. Roberts, as Treasurer of the State of California, Defendant and Appellant. Certified copy of judgment of Supreme Court of State of California.

74 [Endorsed:] In the Supreme Court of the United States. The Bank of California, National Association (a corporation), Plaintiff in Error, vs. E. D. Roberts, as Treasurer of the State of California, Defendant in Error. Return of Clerk of the Supreme Court of the State of California to writ of error.

Endorsed on cover: File No. 25,737. California Supreme Court. Term No. 907. The Bank of California, National Association, plaintiff in error, vs. E. D. Roberts, as treasurer of the State of California. Filed February 2d, 1917. File No. 25,737.

BANK OF CALIFORNIA, NATIONAL ASSOCIATION, *v.* ROBERTS, TREASURER OF THE STATE OF CALIFORNIA.

ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

No. 115. Submitted December 19, 1918.—Decided January 27, 1919.

Decided on authority of *Bank of California* v. *Richardson*, *ante*, p. 476. 173 California, 398, reversed.

Mr. E. S. Pillsbury, *Mr. F. D. Madison*, *Mr. Alfred Sutro* and *Mr. Oscar Sutro* for plaintiff in error. *Mr. A. D. Plaw* was also on the brief.

Mr. U. S. Webb, Attorney General of the State of California, and *Mr. Raymond Benjamin*, Chief Deputy

Attorney General of the State of California, for defendant in error.

Per Curiam: This case is controlled by the opinion in *Bank of California* v. *Richardson*, *ante*, p. 476. Indeed, it was submitted without briefs upon the briefs filed in that case. For the reasons stated in the previous case, therefore, the judgment here must be reversed and the case remanded for further proceedings not inconsistent with this opinion.

Reversed.